

opportunity for public comment. A notice will be published in the FEDERAL REGISTER subsequent to the action.

[60 FR 53145, Oct. 12, 1995. Redesignated and amended at 61 FR 15887, 15890, Apr. 10, 1996]

Subpart N—Taking of Marine Mammals Incidental to Underwater Detonation of Conventional Explosives by the Department of Defense

SOURCE: 59 FR 5126, Feb. 3, 1994, unless otherwise noted. Redesignated at 61 FR 15887, Apr. 10, 1996.

§ 216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the Outer Sea Test Range of the Naval Air Warfare Center, Pt. Mugu, Ventura County, CA.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited annually to the following species and species groups:

	Le- thal	In- jury	Har- ass- ment
California Sea Lion	2	38	173
Harbor Seal	2	16	68
Northern Elephant Seal	9	158	724
Northern Fur Seal	2	13	57
Common Dolphin	1	16	67
Striped Dolphin	0	2	5
Risso's Dolphin	0	1	2
Pacific White-Sided Dolphin	3	52	236
Northern Rt. Whale Dolphin	2	24	108
Dall's Porpoise	0	6	18
Bottlenose Dolphin	0	4	15
Killer Whale	0	0	1
Sperm Whale	0	6	20
Beaked Whales	0	0	3
Minke Whale	0	0	4
Blue Whale	0	1	11
Fin Whale	0	0	6
Sei Whale	0	0	1
Humpback Whale	0	0	4
Gray Whale	0	3	40
Right Whale	0	0	1

§ 216.152 Effective dates.

Regulations in this subpart are effective from March 3, 1994, through March 3, 1999.

§ 216.153 Permissible methods of taking; mitigation.

(a) U.S. citizens holding a Letter of Authorization issued pursuant to § 216.106 may incidentally, but not intentionally, take marine mammals by harassment, injury or killing in the course of the detonation of conventional explosives up to the following maximum annual level within the area described in § 216.151(a):

(1) 12 detonations of 10,000 lbs (4,536 kg);

(2) 2 detonations of 1,200 lbs (544 kg);

(3) 10 detonations of 100 lbs (45 kg);

(4) 10 detonations of 10 lbs (4.5 kg); and

(5) 20 detonations of 1 lb (0.45 kg), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone.

(2) If weather and/or sea conditions preclude adequate aerial surveillance, detonation must be delayed until conditions improve sufficiently for aerial surveillance to be undertaken.

(3) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next project.

[59 FR 5126, Feb. 3, 1994. Redesignated and amended at 61 FR 15887, 15890, Apr. 10, 1996]

§ 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.153 or by a Letter of Authorization issued under § 216.106, the following activities are prohibited: